IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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R.S.A. No. 4366 of 2003

Date of decision: August 11, 2006

Ajaib Singh and others

… Appellants

Versus

Amarjit Kaur and another

… Respondents

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**CORAM: HON'BLE MR. JUSTICE AJAY KUMAR MITTAL**

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PRESENT: Mr. Harsh Aggarwal, Advocate for the appellants.

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JUDGMENT

This appeal is directed against the judgment and decree dated 1.4.2003 passed by the Additional District Judge, Sangrur whereby the appeal filed by the appellants against the judgement and decree dated 4.3.2002 of the trial court was affirmed and suit of the plaintiff-appellants was dismissed. Originally, Mehar Singh plaintiff filed a suit for declaration that he was owner in possession of 1/3rd share in the total land measuring 80 Kanals 9 Marlas situated in village Ghorenab, in district Sangrur. Further declaration was sought that the civil court decree dated 28.9.1996 passed in civil suit titled as "Amarjit Kaur Versus Kehar Singh" by the Civil Judge (Junior Division), Sunam and mutation No. 6420 sanctioned in favour of defendant No.1 on the basis of that decree were wrong and illegal and liable to be set aside. Mehar Singh, however died and is now represented by his legal representatives.

Suit was contested by the defendants who filed their joint written statement wherein they raised various preliminary objections. The pleas raised by the plaintiff were controverted.

Initially, the following issues came to be framed:

1- Whether the plaintiff is owner in possession upto extent of 1/3 share in the suit land? OPP

2- Whether the judgment and decree dated 28.9.1996 is illegal, null and void on the ground mentioned in the plaint? OPP

3- Whether the mutation no. 6420 is also illegal and is also liable to be set aside? OPP

4- Whether the plaintiff is entitled for declaration and injunction, as prayed for? OPP

5- Whether the suit is bad for mis-joinder and non-joinder of necessary parties? OPD

6- Whether the plaintiff has no locus standi and cause of action to file the instant suit? OPD

During the pendency of the suit, amendment of written statement was allowed by the trial court. A plea was raised on behalf of the defendants that Kehar Singh (defendant No.2) deceased had executed a registered will No. 102 dated 11.1.1996 in the presence of two witnesses and by virtue thereof, defendant No.1 was owner in possession of the share of defendant-Kehar Singh. This averment was, however, denied on behalf of the plaintiff by filing replication wherein it was stated that the aforesaid will was forged and fabricated document and had no effect on the rights of the plaintiff. These pleadings gave rise to the following two additional issues:

` 6-A Whether Kehar Singh deceased executed a registered will No. 102 dated 11.1.1996, in favour of defendant No.1, if so its effect? OPD

6-B If issue No.6-A is proved, whether the will dated 11.1.1996 is forged and fictitious document and has no effect on the rights of the plaintiff? OPP

All the issues except issue No.5 were decided against the plaintiff and consequently, the suit was dismissed. Appeal preferred against trial court judgment and decree was also dismissed.

I have heard learned counsel for the appellants and gone through the record. The trial court on appreciation of evidence returned

a finding that the civil court decree dated 28.9.1996 was perfectly legal and valid and the mutation sanctioned on the basis thereof was also legal and the plaintiff had no concern with the land of the share of Kehar Singh defendant No.2. The trial court further recorded a finding that the plaintiff had failed to prove how the will dated 11.1.1996 in favour of Amarjit Kaur defendant No.1 was a forged and fabricated document. as alleged in the written statement. These findings were affirmed by the first appellate court on re-appreciation of evidence. In view of the law laid down by the Apex Court in **Kondiba Dagadu Kadam Versus Savitri Bai Sapan Gujar and others**, **A.I.R. 1999 SC 2213,** the learned counsel for the appellants was called upon to indicate substantial question of law which arises for determination in this Regular Second Appeal. But the counsel could not pin point any error of law or perversity in the judgment and decree passed by both the courts so as to persuade this Court to interfere in second appeal. No question of law, much less a substantial question of law arises in this appeal for the consideration of this Court. The appeal is consequently dismissed.

( AJAY KUMAR MITTAL )
JUDGE

August 11, 2006
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